

ARK548 DOE v Archdiocese of N.Y.

2023 NY Slip Op 32712(U)

July 31, 2023

Supreme Court, New York County

Docket Number: Index No. 950763/2021

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK**

PRESENT: HON. LAURENCE L. LOVE PART 63M

Justice

-----X

ARK548 DOE,

Plaintiff,

- v -

ARCHDIOCESE OF NEW YORK; ORDER OF
PREACHERS PROVINCE OF ST. JOSEPH-EASTERN
DOMINICAN PROVINCE f/k/a ORDER OF PREACHERS
PROVINCE OF ST. JOSEPH d/b/a DOMINICAN FATHERS
PROVINCE OF ST. JOSEPH, INC.; DOMINICAN CAMP;
and DOES 1-5 whose identities are unknown to Plaintiff,

Defendants.

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INDEX NO. 950763/2021

MOTION DATE 07/30/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

were read on this motion to/for AMEND.

Upon the foregoing documents, Plaintiff moves to amend the complaint to add Brothers of St. Francis Xavier a/k/a Xaverian Brothers, U.S.A. Inc. f/k/a St. Joseph Province a/k/a American Northeastern Province of Xaverian Brothers Inc. (“Xaverian Brothers”) as a defendant pursuant to CPLR 3025(b) and file a supplemental summons and amend the complaint pursuant to CPLR 305(a) (Motion Seq. 003). Xaverian Brothers filed a cross motion to intervene in this action pursuant to CPLR 1012 and 1013 and to deny Plaintiff’s motion to amend the complaint pursuant to CPLR 3211(a)(5). Defendant Order of Preachers Province of St. Joseph a/k/a Order of Preachers Province of St. Joseph-Eastern Dominican Province a/k/a Dominican Fathers Province of St. Joseph, Inc. (“Dominicans”) filed an affirmation in opposition.

Plaintiff alleges that while a camper at Dominican Camp he was sexually abused by Br. Ed, an employee at the camp from 1975 to 1978 when Plaintiff was approximately 8 to 11 years old.

Discussion

As a preliminary matter, Xaverian Brothers filed a cross motion to intervene. Neither Plaintiff nor the named Defendants opposed this relief and it is clear that if Xaverian Brothers is added as a defendant there will be “a common question of law or fact” and that allowing Xaverian Brothers to intervene will not “unduly delay the determination of the action” because if Plaintiff’s motion is granted, Xaverian Brothers can then file a motion to dismiss (see CPLR 1013).

Plaintiff commenced the instant action on July 30, 2021. Plaintiff filed a motion to amend on September 07, 2022, a date indisputably after the expiration of the two-year window to file Child Victims Act cases. Plaintiff contends that the motion to amend and add Xaverian Brothers should be granted pursuant to CPLR 3025(b) as Xaverian Brothers is an appropriate defendant under the relation-back doctrine.

"The relation-back doctrine allows a party to be added to an action after the expiration of the statute of limitations, and the claim is deemed timely interposed, if (1) the claim arises out of the same conduct, transaction, or occurrence, (2) the additional party is united in interest with the original party, and (3) the additional party knew or should have known that but for a mistake by the plaintiff as to the identity of the proper parties, the action would have been brought against the additional party as well" (*Roco G.C. Corp. v Bridge View Tower, LLC*, 166 AD3d 1031, 1033-1034 [2d Dept 2018]) [internal quotation marks omitted]; see *Buran v Coupal*, 87 NY2d 173 [1995]). As it has been established the statute of limitations to file under the Child Victims Act

has expired, [t]he burden then shifts to the plaintiff to present evidence sufficient to establish that the relation-back doctrine applied (*see Raymond v Melohn Props., Inc.*, 47 AD3d 504 [1st Dept 2008]).

It is undisputed that the first prong has been met in that Plaintiff wants to add Xaverian Brothers for the same claim as the other named defendants. The Court need not weigh in on if Xaverian Brothers and Dominicans are united in interest as the third prong has not been met.

Plaintiff cannot establish that Xaverian Brothers knew or should have known of the instant matter. “[T]he ‘linchpin’ of the relation back doctrine [is] notice to the defendant within the applicable limitations period (*Buran* at 180). Although the parties agree Xaverian Brothers and Dominicans were both involved with Dominican Camp around the time of the incidents from approximately 1975 to 1978, it is also not in dispute that this relationship ended in or around 1986 when Dominican Camp closed. Plaintiff, however, argues that prong 3 of the relation-back doctrine has been met.

Plaintiff characterizes Xaverian Brothers’ relationship with Dominicans as either employer-employee relationship or a joint venture. New York courts have held that the relation-back doctrine is inapplicable when a proposed defendant is a former employee at the time the lawsuit was filed unless there is actual evidence the former employee knew of the lawsuit prior to the expiration of the statute of limitations. In *Dixon v. Jones*, the Court found that because “the appellant was no longer working for the practice at the time of the commencement of the action, and there is no evidence that she had actual or constructive knowledge within the limitations . . . the plaintiffs failed to establish that the appellant knew or should have known that, but for a mistake as to the identity of the proper parties, this action would have been commenced against her as well” (*Dixon v Jones*, ___AD3d___, 2023 NY Slip Op 03336, *1 [2023] (internal citations omitted); *see*

also Cintron v Lynn, 306 AD2d 118 [1st Dept 2003]). Similarly, when a proposed defendant is a separate corporation providing a service and has no knowledge of the lawsuit, the court cannot find that the proposed defendant should have known and therefore the relation-back doctrine cannot be utilized (*see Shapiro v Good Samaritan Regional Hosp. Med. Ctr.*, 42 AD3d 443 [2d Dept 2007]).

Plaintiff does not provide any evidence or even allege that Xaverian Brothers had any information regarding the specific allegations as to Plaintiff and Br. Ed as outlined in the complaint within the statute of limitations. Plaintiff instead argues that Xaverian Brothers knew or should have known they would be sued as they have been named in several Child Victims Act lawsuits including two where they are co-defendants with the Dominicans for alleged incidents at Dominican Camp. The standard however is not whether or not Xaverian Brothers knew they could be sued under the Child Victims Act because of other lawsuits but whether they had notice of the allegations in the complaint in the instant matter.

“An action arising out of the same incident previously and timely filed by a different plaintiff against the same defendants does not inure to a plaintiff who failed to file an action against those very same defendants” (*Anderson v J.D. Posillico, Inc.*, 2015 NY Slip Op 31240[U], *16-17 [Sup Ct, Suffolk County 2015]). The instant matter is even more tenuous in that here Plaintiff, unlike *Anderson*, is arguing that they should be permitted to add a defendant because the defendant was aware of a certain type of case that has been filed against the proposed defendant and named defendant regarding a *different* incident. As Plaintiff cannot establish that Xaverian Brothers knew or should have know of this lawsuit within the statute of limitations, Plaintiff cannot establish that the 3 prong test of the relation-back doctrine has been met and therefore the application to add a defendant at this stage is denied.

CONCLUSION

Accordingly, it is

ORDERED that the cross-motion of Xaverian Brothers to intervene is granted; and it is further

ORDERED that the motion of Plaintiff is denied as the statute of limitations to file under the 2 year Child Victims Act look-back window has expired; and it is further

ORDERED that the parties shall proceed with discovery pursuant to CMO No. 2, Section IX (B) (1) and submit a first compliance conference order within 60 days.

This constitutes the decision and order of the Court.

7/31/23



<u>DATE</u>					<u>LAURENCE L. LOVE, J.S.C.</u>	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	